

S.B.CIVIL WRIT PETITION NO.32/1996

Mohanlal
V.
Board of Revenue for Rajasthan, Ajmer & Anr.

Date of Order :: 9th July, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. S.N.Trivedi, for the respondent.

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On an application preferred by the petitioner, the Tehsildar, Sridungargadh while exercising powers conferred by Section 251 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Act of 1955") after holding a summary inquiry ordered on 23.2.1994 to remove disturbance created by the respondent No.2 on way and also ordered to restore the enjoyment of way availed by the petitioner relating to the land under his holding. An appeal preferred by the respondent No.2 giving challenge to the order dated 23.2.1994 also came to be rejected by the Collector, Churu under an order dated 23.6.1994. A revision petition then preferred by the respondent No.2 before the Board of Revenue, Rajasthan, Ajmer, was accepted vide order dated 21.11.1995 on the count that the Tehsildar, Sridungargadh in light of the notification dated 4.9.1982 issued by the State Government exercising powers under Section 260 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred

to as "the Act of 1956") travelled beyond the jurisdiction vested with him while exercising powers under Section 251 of the Act of 1955.

By this petition for writ a challenge is given to the validity, propriety and correctness of the order dated 21.11.1995 with a contention that the notification dated 4.9.1982 issued by the State Government exercising powers under Section 260 of the Act of 1956 cannot oust jurisdiction of the Tehsildar that was vested with him by provisions of Section 251 of the Act of 1955.

The contention of learned counsel for the petitioner is that under Section 251 of the Act of 1955 the original powers to remove obstruction/disturbance from a right to avail way by a land holder is with Tehsildar and by circular of 1982 such power is delegated to the Gram Panchayat of village concerned for a definite period and, therefore, merely on basis of delegation of power the original authority cannot be said to have stripped from the powers vested by the force of statute.

Heard counsel for the parties.

The provisions of Section 251 of the Act of 1955 provides as under:-

“251.Rights of way and other private easement.--(1)In the event of any holder of land, in actual enjoyment of a right of way or other easement or right, having, without his consent, been disturbed in such enjoyment otherwise than in due course of law, the Tehsildar may, on the application of the holder of land so disturbed and after making a summary inquiry into the fact of such enjoyment and disturbance, order the disturbance to be removed or stopped and the applicant holder to be restored to such enjoyment, notwithstanding any other title that may be set up before the Tehsildar against such restoration.

(2)No order passed under this section shall debar any person from establishing such right or easement as he may claim by a regular suit in a competent civil court.”

Section 260 of the Act of 1956 empowers the State Government to delegate certain powers of certain authorities by making a notification in official gazette. Clause (b) of Section 260 of the Act of 1956 i.e. relevant in present controversy reads as follows:-

“260.--Delegation - (1)The State Government may, by notification in the Official Gazette.--

(b)direct that any duties imposed and powers conferred by this Act or the rules made thereunder or by any other law for the time

being in force or the rules made under such other law on any officer or authority appointed or constituted under this Act or the rules made thereunder shall be performed and exercised by any other lawfully appointed or constituted officer or authority specified in the notification, whether such other officer or authority shall have been appointed or constituted under this Act or the rules made thereunder any other law for the time being in force or the rules made under such other law,”

(As it was existing prior to amendment introduced vide ordinance No.8 of 1988 dated 1.9.1988 published in Rajasthan Gazette Extraordinary dated 1.9.1988.)

The Government of Rajasthan while exercising powers under Section 260 of the Act of 1956 by a notification dated 4.9.1982 delegated powers of the Tehsildar to village Panchayat in following terms:-

“Noti.No.F.5(21)Rev/Gr.4/80/34, dt.4-9-1982, S.O.88.--In exercise of the powers conferred by clause (b) of Section 260 of the Rajasthan Land Revenue Act, 1956 (Raj. Act 15 of 1956) and in supersession of Revenue (B) Department Notification No. F.6(11) Rev./B/60 dt. 17-6-1961, the State Government hereby directs that:-

1.The powers conferred on a Tehsildar by sub-section (1) of Section 251 of the Rajasthan Tenancy Act, 1955 (Raj. Act No. 3 of 1955) for disposing of applications relating to disturbance in the actual

enjoyment of a right of way or other easement or right by land holders, shall be exercised by the Village Panchayat of the Village in which the land is situated. The applications received by the Tehsildar on his behalf shall be duly entered in a register to be maintained for the disposal of such applications and thereafter, forwarded to the concerned Village Panchayat for disposal. In cases in which the Village Panchayat fails to dispose of an application within 45 days from the date of receipt by it either directly or through the Tehsildar, the Village Panchayat will cease to have any jurisdiction in the matter, and the application will be forwarded to the Tehsildar having jurisdiction forthwith, who will enquire into the disposal of the application within 30 days of its receipt by him. In cases in which a Village Panchayat does not forward the application immediately after the expiry of 45 days, the Tehsildar having jurisdiction shall have power to recall the application from the Village Panchayat and dispose of the same.

2. An appeal against an order passed by a Village Panchayat in such cases lies to the collector of the district concerned.

[Pub. In Raj. Gaz., Exty., Pt. 4(C), dt. 25-9-1982, p. 220.]”

Precisely the question requires determination in this petition for writ is that whether delegation of powers relating to Tehsildar to the Village Panchayat by the State Government

exercising powers under clause (b) of Section 260 of the Act of 1956 oust the Tehsildar from the powers given under Section 251 of the Act of 1955.

In accordance with Section 251 of the Act of 1955 in the event of any holder of land, in actual enjoyment of a right of way or other easement or right, having, without his consent, been disturbed in such enjoyment otherwise than in due course of law, the Tehsildar may, on the application of the holder of land so disturbed and after making a summary inquiry into the fact of such enjoyment and disturbance, order the disturbance to be removed or stopped and the applicant holder to be restored to such enjoyment, notwithstanding any other title that may be set up before the Tehsildar against such restoration.

The Government of Rajasthan by notification dated 4.9.1982 while exercising powers under Section 260 of the Act of 1956 delegated powers of the Tehsildar as prescribed under Section 251 of the Act of 1955 to the village panchayat. However, such delegation of power to village panchayat does not divest Tehsildar from exercising the powers vested with him by statute to remove or stop the disturbance. The delegation of power does not exclude or divest the original authority from exercising the powers vested with it by the will of legislature.

The notification dated 4.9.1982 certainly extends jurisdiction to exercise powers under Section 251 of the Act of 1955 to village panchayat but it does not effect the jurisdiction possessed by the Tehsildar as prescribed under the provision referred above. The Board of Revenue by order dated 21.11.1995, therefore, committed an error apparent on the face of record while holding that the Tehsildar travelled beyond the jurisdiction vested with him while exercising powers under Section 251 of the Act of 1955 as the power was already delegated to the village panchayat under the notification dated 4.9.1982.

This petition for writ, therefore, deserves acceptance and the same, therefore, is allowed. The order impugned dated 21.11.1995 passed by the Board of Revenue Rajasthan, Ajmer is quashed. The order passed by the Tehsildar, Sridungargadh dated 23.2.1994 stands restored.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.